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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 143 of 2010

Cuttack, this the 25th day of April, 2012

Smt. Lovabati Mallick Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? X
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? X


(A.K. PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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Cuttack, this the 25th day of April, 2012

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER, (ADMN.)

And

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

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Smt.Lovabati Mallick, aged about 40 years, W/o.Arun Kumar Nayak, resident of Dumuduma Housing Board Colony, House No.807, Phase-II, Bhubaneswar-751019, Dist.Khurda, Orissa at present working as Upper Division Clerk in the Office of Executive Engineer, Central Ground Water Board, Divison-X, Bhujal Bhawan, Khandagiri Chhak, Bhubaneswar-751 030, Orissa.

....Applicant

By legal Practitioner-Mr. K.C.Kanungo, Counsel.

-Versus-

1. Chairman, Central Ground Water Board, Ministry of Water Resources (Govt. of India), Bhujal Bhawan, N.H-IV, Faridabad, Hariyana.
2. Director (Admn.), Central Ground Water Board, Ministry of Water Resources (Govt. of India), Bhujal Bhawan, N.H-IV, Faridabad, Hariyana.
3. Regional Director (SER), Central Ground Water Board, Bhujal Bhawan, Khandagiri Chhak, Dist. Khurda, Bhubaneswar-751 030, Orissa.
4. Executive Engineer, Central Ground Water Board, Division-X, Bhujal Bhawan, Khandagiri Chhak, Dist. Khurda, Bhubaneswar-751 030, Orissa.
5. Union of India represented through the Secretary, Ministry of Personnel, Public Grievance and Pension Depatt. Of Personnel & Training, North Block, New Delhi-1.

....Respondents

By Legal Practitioner - Mr.U.B.Mohapatra, SSC

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ORDERC.R.MOHAPATRA, MEMBMR (ADMN.):

Applicant who belongs to Scheduled Caste Community and working as Upper Division Clerk in the Office of the Executive Engineer, Central Ground Water Board, Division-X, Bhubaneswar in the State of Odisha in this OA challenged the action of the Respondents for not following the principle of reservation while conducting selection and filling up of 10% vacancies in the grade of Assistant by way of Limited Departmental Competitive Examination.

Her prayer in this Original Application is to direct the Respondent No.1 to modify/correct the Roster Register by providing necessary reservation for SC & ST employees in the grade of Assistant under 10% Limited Departmental Competitive Examination and accordingly, the Respondents to recast the roster register at Annexure-A/4 and compute/keep the number of vacancies falling under reservation roster for SC & ST employees under 10% Limited Departmental Competitive Examination quota for promotion to Assistant.

Her further prayer is to hold that any promotion to the post of Assistant against the 10% LDCE quota earmarked for SC by anybody else is illegal.

2. The main stand of the Respondents is that reservation is not applicable where the element of filling up of

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the vacancies is less than 25% and as in the instant case as per the Rules, only 10% posts of Assistant are earmarked to be filled up through LDCE, the principle of reservation is not applicable and, accordingly was not followed by the Respondents while filling up of one vacancy of Assistant in the year 2006-07, one in 2007-08, and one in 2008-09. In this connection, the Respondents have relied on the Office Note dated 12.05.2010 said to have been sent to the AO (Litigation), CGWB, NH IV Faridabad stating therein that "it is further informed that the reservation is not applicable if in the method of recruitment the element is less than 25% of the posts. In this case only 10% posts are filled by Limited Departmental Examination. Therefore, reservation is not applicable." Accordingly, Respondents have prayed for dismissal of this OA.

3. Applicant filed rejoinder in which it has been stated that Rules of reservation flows from Constitution of India. Vacancy based roster has been replaced by Post based roster. There is no law or rule or circular stating that rule of reservation will not be applicable when the percentage of posts to be filled up by Limited Departmental Competitive Examination is only 10% which is less than 25%. With the above, applicant reiterated her prayer made in this OA.

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24 4. Mr.Kanungo, Learned Counsel for the applicant contends that there are 72 posts of Assistants out of which, by applying the percentage of reservation 15% & 7 ½%, 10 & 5 posts are reserved for SC & ST respectively. Accordingly by computing the earmarked quota for SC under LDCE the figure will be 7.2. On further computation by applying reservation percentage for SC, the figure will be 1.08 say 02. Therefore, the post of Assistant falling under LDCE quota in respect of SC will be always be 02. After 2002 no SC employee who has cleared the LDCE has got promotion under LDCE quota on application of reservation roster. He has further contended that reservation for SC & ST etc. to the posts and vacancy in employment is provided in the Constitution of India and the DOP&T is the nodal Ministry whose instruction on the subject is followed by all Departments. The office note issued by the Respondent-Department based on which the SC&ST employees have been deprived of their legitimate right having no force is not sustainable in the eyes of law. The reservation quota of 1.5 or 2 meant for SC remains vacant as such. It was therefore constitutionally imperative on the part of the Respondents to correct the roster register and grant the benefit to SC&ST employees of the Department in the matter of promotion to the post of Assistant under LDCE.

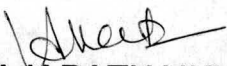
On the other hand, Mr. Mohapatra, Learned SSC appearing for the Respondents strongly refuted the stand taken by the Applicant's Counsel. It was contended by him that as per Recruitment Rules, 90 per cent of the total posts in the grade of UDC in CGWB are to be filled up from the feeder grade of UDC having eight years regular service and rest 10% by way of promotion on the basis of Limited Departmental Competitive Examination from among the Upper Division Clerks who have completed five years of regular service in the grade. It is the contention of the Respondents' Counsel that in 2006-07, 2007-08, and 2008-09, one vacancy each in the grade of Assistant was notified to be filled up through LDCE from amongst the UDC. Whoever came out successful in the examination was selected and promoted to the post of Assistant. When the vacancy was notified to be filled up by way of competitive examination and the applicant having secured less percentage of marks than the selected candidate merely because she was a SC candidate cannot claim any right to be appointed. It has further been stated by the Respondents that reservation is not applicable, if in the method of recruitment the element of filling of vacancies is less than 25% of the posts. In the instant case as only 10% posts are filled up by LDCE reservation is not applicable for promoting the candidates through LDCE and


therefore by placing reliance on the office note dated 12.05.2010 Mr. Mohapatra, Learned SSC reiterated that this OA being devoid of any merit is liable to be dismissed.

5. Considered the rival submission of the parties and perused the materials placed on record. It is not in dispute that the claim of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration in consistent~~te~~ with the maintenance of efficiency of administration in making appointments to services and posts in connection with the affairs of the Union or of a State is a constitutional provision provided in Article 335 of the Constitution of India. The reservation provision provided in this Article has received consideration of the Hon'ble Apex Court in very many cases in past and based on the constitutional provision and decisions of the Hon'ble Apex Court various circulars/instructions have been issued by the nodal Ministry/Respondent No.5 (Ministry of Personnel, Public Grievance and Pension Depatt. Of Personnel & Training, North Block, New Delhi-1). According to the Respondents reservation principle could not be followed by them while filling up of the post of Assistant in the instant case because of the office note dated 12.5.2010 providing therein that reservation is not applicable if in the method of recruitment the element is less than 25% of the posts. In this case only

10% posts are filled by Limited Departmental Examination. Therefore, reservation is not applicable. Even if we accept that the action of the Respondents is correct we fail to understand as to how the office note dated 12.5.2010 was followed by the Respondents while filling up of the vacancy of the years 2006-07, 2007-08, and 2008-09 in the absence of any express provision that the same has retrospective application, we are yet to find any force in the said office note issued by the Administrative Officer of the CGWB. As such non-adherence of the principle of reservation in the matter of promotion through LDCE is held to be against principle of reservation to posts and vacancies. But we refrain from declaring the promotion to the post of Assistant under the 10% LDCE quota earmarked for SC is void as the applicant has not made any such promotees as a party to this OA nor has he sought quashing of the office note dated 12.05.2010. However, as we hold that non observance of the principle of reservation while filling up of the vacancy in the grade of Assistant is bad in law, the Respondents are hereby directed to review the matter within a period of ninety days from the date of receipt of copy of this order. But adversial order, if any, should be issued only after complying with the principles of natural justice i.e. after putting the already promoted persons to notice.

In the result, this OA stands allowed to the extent
stated above. There shall be no order as to costs.


(A.K. PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

